IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal (L) No.420 of 2007
In
Notice of Motion No.1168 of 2007
In
Arbitration Petition No.65 of 2003

F.A. & Master Associates. .. Appellants

Vs.

L & T Finance Limited. .. Repondents
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S/Shri S.U.Kamdar, Senior Counsel i/b A.M.Saraogi for the appellants.

Smt. Shakuntala Joshi for the respondents.
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A N D

Appeal (L) No.421 of 2007
In
Notice of Motion No.1166 of 2007
In
Arbitration Petition No.64 of 2003

F.A. & Master Associates. .. Appellants

Vs.

L & T Finance Limited. .. Repondents
--

S/Shri S.U.Kamdar, Senior Counsel i/b A.M.Saraogi for the appellants.

Smt. Shakuntala Joshi for the respondents.
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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 27TH APRIL, 2007

P.C.

1. Heard.

2. Since common questions of law and facts arise in both these appeals, they were heard together and are being disposed of by this common order.

3. The appellants challenge the order dated 20th April, 2007 passed in Notice of Motion No.1166 of 2007 and Notice of Motion No.1168 of 2007 in Arbitration Petition Nos.64 and 65 of 2003 respectively. The challenge is on the ground that the so called consent given by the attorney of the appellants, based on which the order dated 22nd December, 2006 was obtained, the attorney was not at all authorised to give such consent as the power which was delegated to the attorney was delegated to the extent in the arbitration petition and to sign whatever documents which are required to be signed in the course of hearing of the arbitration proceedings and it did not extend to give consent either to deposit or withdraw the amount deposited by the respondents during the arbitration petition.

4. Undoubtedly, the deed of power of attorney does not disclose the power to give approval or to give consent for decision on any of the issues involved in the matter or related to the dispute. However, the fact remains that the attorney was authorised to act on behalf of the appellants in the arbitration proceedings and in that capacity the attorney had filed the consent terms. It is also undisputed fact that the appellants were made known about the consent terms by their advocate on 16th March, 2007 at about 10.00 a.m. and thereafter the appellants deposited the amount which was withdrawn by the respondents consequent to the passing of the impugned order. Relevant portion of the affidavit which is filed in support of the application for recall of the order based on the consent terms reads thus:-

> "I say that it is only because of the said reason, I visited to the office of Mr.Ashore Saraogi on 16th March, 2007 in the morning at around 10 a.m. in order to assure him that the pay orders would reach his office by 11.00 to 11.30 a.m. I say that it is the fact when I contacted my Advocate on 16th March, 2007, I was informed by him that the Hon’ble Court had

> passed an order on the basis of the consent terms filed between the Petitioners and the Respondents hereinabove being Consent Terms dated 22/12/2006. The said Advocate also handed over copy of the said Consent Terms to me and accordingly hereto annexed and marked EXHIBIT "B" is copy of the said Consent Terms so filed before this Hon'ble Court."

Plain reading of the contents of the said affidavit discloses that the appellants learnt about the consent terms by 10.00 a.m. on 16th March, 2007 and it is only thereafter the appellants deposited the amount in terms of the consent order. This evidently discloses that the decision and the act on the part of the attorney of the appellants in giving consent, based on which the order dated 22nd December, 2006 was passed, was ratified by the appellants by depositing the amount in terms of the consent order. Being so, it is too late for the appellants to dispute about the decision and the act of the attorney of the appellants in executing the consent terms. In any case the amount which was deposited was withdrawn by the respondents and the appellants are duly protected by the bank guarantee furnished towards the said amount. Being so, we do not find any case being made out for

interference in the impugned orders. Hence both the appeals fail and are hereby rejected.

(D.G.KARNIK,J) (R.M.S.KHANDEPARKAR, J)